

Testa Excavating Co., Inc. and Connecticut Laborers' Funds a/w Laborers' International Union of North America, AFL-CIO. Case 34-CA-5832

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

On January 8, 1993, the National Labor Relations Board issued a Decision and Order, inter alia, ordering Testa Excavating Co., Inc., the Respondent, to make whole its unit employees for its failure to make contractually required payments for health, pension, training, legal services, and annuity in violation of the National Labor Relations Act.

A controversy having arisen over the amounts due, on June 15, 1993, the Regional Director for Region 34 issued a compliance specification and notice of hearing alleging the amounts due under the Board's Order, and notifying the Respondent that it should file a timely answer complying with the Board's Rules and Regulations. Although properly served with a copy of the compliance specification, the Respondent has failed to file an answer.

By letter dated July 7, 1993, the Region advised the Respondent that no answer to the compliance specification had been received and that unless an appropriate answer was filed by July 14, 1993, summary judgment would be sought. The Respondent filed no answer.

On July 19, 1993, the General Counsel filed with the Board a motion to transfer case to the Board and for summary judgment, with exhibits attached. On July 21, 1993, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent again filed no response. The allegations in the motion and in the compliance specification are therefore undisputed.

Ruling on the Motion for Summary Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that the Respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) of the Board's Rules and Regulations states:

If the respondent fails to file any answer to the specification within the time prescribed by this

section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the Motion for Summary Judgment, the Respondent, despite having been advised of the filing requirements, has failed to file an answer to the compliance specification. In the absence of good cause for the Respondent's failure to file an answer, we deem the allegations in the compliance specification to be admitted as true, and grant the General Counsel's Motion for Summary Judgment. Accordingly, we conclude that the net amounts due are as stated in the compliance specification and we will order payment by the Respondent to the funds, plus interest accrued on said amounts to the date of payment.

ORDER

The National Labor Relations Board orders that the Respondent, Testa Excavating Co., Inc., South Norwalk, Connecticut, its officers, agents, successors, and assigns, shall make whole its unit employees by paying each of the benefits funds the amounts set forth below opposite their names, plus interest accrued on these amounts to the date of payment:

Connecticut Laborers Health Fund	\$20,533.70
Connecticut Laborers Pension Fund	11,021.60
Connecticut Laborers Annuity Fund	10,391.25
Connecticut Laborers' Legal Services Fund	346.78
New England Laborers Training Fund	1,385.10

Dated, Washington, D.C. August 26, 1993

James M. Stephens, Chairman

Dennis M. Devaney, Member

John Neil Raudabaugh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD